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10 Attorneys for Defendant,
11 ARS NATIONAL SERVICES, INC.

12
13 **IN THE UNITED STATES DISTRICT COURT**
14
15 **FOR THE DISTRICT OF NEVADA**

16 TIM TOTH,

17 Plaintiff,

18 vs.

19 ARS NATIONAL SERVICES, INC.,

20 Defendant

Case No.: 2:14-cv-01264-RCJ-PAL

ANSWER TO THE COMPLAINT

Complaint filed: 08/01/14

21 COMES NOW Defendant ARS NATIONAL SERVICES, INC., (hereinafter
22 "Defendant"), by and through its counsel of record, and hereby answers the Complaint of
23 Plaintiff TIM TOTH ("Plaintiff") by admitting, denying and alleging as follows:

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JURISDICTION

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2 1. Answering the first Paragraph 1 of Plaintiff's Complaint, Defendant admits that this
3 action arises out of alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. §
4 1692, *et seq.* ("FDCPA"); however, Defendant denies any violation thereof or any wrongdoing
5 whatsoever.
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7 2. Defendant denies the allegations contained in the second Paragraph 1 of Plaintiff's
8 Complaint.
9

10 3. Answering Paragraph 2 of Plaintiff's Complaint, Defendant admits that this Court has
11 jurisdiction over Plaintiff's federal law claims. Except as specifically admitted to herein,
12 Defendant denies the allegations contained in Paragraph 2 of the Complaint.
13

PARTIES

14 4. Answering Paragraph 3 of Plaintiff's Complaint, Defendant is informed and believes
15 that Plaintiff is an adult individual with an address in Las Vegas, Nevada. Except as
16 specifically admitted to herein, Defendant denies the allegations contained in Paragraph 3 of the
17 Complaint.
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19 5. Answering Paragraph 4 of Plaintiff's Complaint, Defendant admits that it is in the
20 business of collecting debts allegedly owed to another. Except as specifically admitted to
21 herein, Defendant denies the allegations contained in Paragraph 4 of the Complaint.
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23 6. Defendant lacks sufficient information to either admit or deny the allegations contained
24 in Paragraphs 5 and 6 of Plaintiff's Complaint, and on that basis, Defendant denies the same at
25 this time.
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ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

7. Defendant admits the allegations contained in Paragraph 7 of Plaintiff's Complaint.

8. Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 8 of Plaintiff's Complaint, and on that basis, Defendant denies same at this time.

9. Answering Paragraph 9 of Plaintiff's Complaint, Defendant admits that the Debt alleged in the Complaint was placed with Defendant for collection. Except as specifically admitted to herein, Defendant denies the allegations contained in Paragraph 9 of the Complaint.

10. Answering Paragraph 10 of Plaintiff's Complaint, Defendant admits that it attempted to collect the Debt. Except as specifically admitted to herein, Defendant denies the allegations contained in Paragraph 10 of the Complaint.

B. ARS Engages in Harassment and Abusive Tactics

FACTS

11. Defendant admits the allegations contained in Paragraph 10 of Plaintiff's Complaint.

12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant admits receipt of Exhibit 2. However, Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 12 of Plaintiff's Complaint, and on that basis, Defendant denies same at this time.

13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant admits receipt of Exhibit 2. However, Defendant lacks sufficient information to either admit or deny the allegations contained in Paragraph 13 of Plaintiff's Complaint, and on that basis, Defendant denies same at this time.

1 14. Defendant denies the allegations contained in Paragraph 14 of Plaintiff's Complaint as
2 Defendant mailed Plaintiff documents verifying the Debt.

3 15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant admits sending Plaintiff
4 Exhibit 3. However, Defendant denies the allegations contained in Paragraph 15 of Plaintiff's
5 Complaint.
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7 16. Defendant denies the allegations contained in Paragraph 16 of Plaintiff's Complaint as
8 Defendant mailed Plaintiff documents verifying the Debt.
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10 17. Defendant contends that Paragraph 17 of Plaintiff's Complaint contains to affirmative
11 allegations requiring a response from Defendant. To the extent a response is required thereto,
12 Defendant denies the allegations contained in Paragraph 17 of Plaintiff's Complaint.

13 **C. Plaintiff Suffered Actual Damages**

14 18. Defendant denies the allegations contained in Paragraph 18 of Plaintiff's Complaint.

15 19. Defendant denies the allegations contained in Paragraph 19 of Plaintiff's Complaint.
16

17 **D. Respondeat Superior**

18 20. Defendant lacks sufficient information to either admit or deny the allegations contained
19 in Paragraph 20 of Plaintiff's Complaint, and on that basis, Defendant denies same at this time.
20

21 21. Defendant lacks sufficient information to either admit or deny the allegations contained
22 in Paragraph 21 of Plaintiff's Complaint, and on that basis, Defendant denies same at this time.

23 22. Defendant lacks sufficient information to either admit or deny the allegations contained
24 in Paragraph 22 of Plaintiff's Complaint, and on that basis, Defendant denies same at this time.
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26 23. Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.
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COUNT I
VIOLATIONS OF THE FDCPA – 15 U.S.C. § 1692, et seq.

24. Answering Paragraph 24 of Plaintiff's Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 23, above as if set forth herein.

25. Defendant denies the allegations contained in Paragraph 25 of Plaintiff's Complaint.

26. Defendant denies the allegations contained in Paragraph 26 of Plaintiff's Complaint.

27. Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. Defendant denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29. Defendant denies the allegations contained in Paragraph 29 of Plaintiff's Complaint.

30. Except as specifically admitted to herein, Defendant denies the foregoing allegations to Plaintiff's Complaint and Defendant denies that Plaintiff is entitled to the relief requested in the "Prayer for Relief" of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
(Failure to State Cause of Action)

31. Plaintiff's Complaint, and each cause of action contained therein, fails to state facts sufficient to constitute a valid cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE
(Lack of Specificity of When Action Accrued)

32. As a separate, affirmative defense, Defendant alleges Plaintiff has not properly alleged the dates of accrual of his cause of action

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THIRD AFFIRMATIVE DEFENSE
(Compliance with Statute)

33. The conduct of Defendant at all times complied with all applicable statutes, regulations and laws; accordingly, the Complaint and each purported cause of action alleged therein against Defendant is barred.

FOURTH AFFIRMATIVE DEFENSE
(No Intentional or Reckless Conduct)

34. As a separate, affirmative defense, Defendant contends that it did not engage in any conduct that was outrageous, intentional and malicious or done with reckless disregard with respect to Plaintiff. Defendant also alleges that it never engaged in any knowing, willful or fraudulent conduct with respect to Plaintiff.

FIFTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

35. Plaintiff is not entitled to recover any damages, or any recovery awarded should be reduced by the amount of damages which reasonably could have been avoided, because Plaintiff failed to take reasonable steps to mitigate his damages with respect to the matters alleged in the Complaint.

SIXTH AFFIRMATIVE DEFENSE
(FDCPA damages are limited)

36. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by 15 U.S.C. § 1692k(a)(1), § 1692(a)(2)(A), § 1692(a)(3) and 15 U.S.C. § 1692k(b)(1).

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SEVENTH AFFIRMATIVE DEFENSE
(Actions Were Proper)

37. As a separate, affirmative defense, Defendant alleges that the alleged actions of Defendant were proper and did not violate any provisions of 15 U.S.C. § 1692, *et seq.* or Civil Code §§ 1788, *et seq.*

EIGHTH AFFIRMATIVE DEFENSE
(Bona Fide Error)

38. As a separate, affirmative defense, assuming *arguendo* that this Defendant violated a statute alleged in the Complaint, which presupposition the Defendant denies, such violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

NINTH AFFIRMATIVE DEFENSE
(Maintained Reasonable FDCPA Procedures)

39. As a separate, affirmative defense, Defendant alleges that at all times alleged in the Complaint, Defendant maintained reasonable procedures created to prevent any type of intentional or negligent violations of the Fair Debt Collection Practices Act ("FDCPA").

RESERVATION OF RIGHTS

40. Defendant reserves the right to amend its Answer and claims herein by adding additional parties, affirmative defenses, counterclaims, cross-claims, and/or third party claims, as additional investigation, discovery or circumstances warrant.

DEFENDANT'S PRAYER FOR RELIEF

WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed with prejudice, for its attorneys' fees and costs incurred herein, and for such further relief as the Court deems just and equitable.

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DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE THAT Defendant ARS NATIONAL SERVICES, INC.,
demands a jury trial in this case.

Dated: September 9, 2014

Respectfully submitted,



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